

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TODD M. LUGAN,

Plaintiff-Counterdefendant-  
Appellee,

v

ELIZABETH L. LUGAN,

Defendant-Counterplaintiff-  
Appellant.

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UNPUBLISHED

March 24, 2005

No. 250717

Oakland Circuit Court

LC No. 2002-669713-DO

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff and defendant were married on July 22, 1989, and separated on January 8, 2002. On January 16, 2002, plaintiff initiated a divorce action. On July 12, 2002, the parties placed a divorce settlement on the record before the trial court. The trial court accepted the settlement and told the parties that it was final and binding, but that they would not be legally divorced until the court signed the judgment of divorce, which plaintiff was going to prepare. On August 13, 2002,<sup>1</sup> the parties again appeared before the trial court, but without a properly prepared judgment for the court to sign and enter. The trial court stated that its policy was to have parties draft and present judgments for the court to sign within 14 days of the entry of the settlement on the record, and, as a result of the parties' failure to provide such a judgment, dismissed the case.<sup>2</sup>

On August 21, 2002, plaintiff filed a second complaint for divorce, which was assigned to the same judge as the first divorce action. On April 1, 2003, defendant moved for the

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<sup>1</sup> We note that in its opinion and order of July 10, 2003, the trial court stated that this hearing occurred on August 6, 2002. However, the transcript record is dated August 13, 2002.

<sup>2</sup> Neither party moved to reinstate the dismissed divorce action, nor did either party appeal the trial court's decision to dismiss. Therefore, the propriety of that dismissal is not now before this Court. However, contrary to plaintiff's assertion, this Court may properly consider whether the trial court erred when it entered a final judgment of divorce that failed to enforce an agreement governing the division of marital property upon dissolution of the parties' marriage. MCR 7.203(A)(1).

adoption of the July 12, 2002, settlement agreement. On April 16, 2003, the trial court denied defendant's motion to adopt the settlement agreement. In denying the motion, the trial court reasoned that the dismissal of the previous case ended its obligation to enforce the settlement agreement within the present divorce action, but indicated that defendant could file a contract action if she wanted to enforce the settlement agreement. On July 10, 2003, after a bench trial, the trial court entered its opinion and order ending the parties' marriage and dividing their marital property.<sup>3</sup> Defendant appealed as of right. We reverse and remand.

Defendant first contends that the trial court erred when it failed to enforce the July 12, 2002, settlement agreement. We agree.

It is a bedrock principle of American contract law "that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). Although contracts in contemplation of divorce were once thought to be contrary to public policy, this is no longer the case. See *Rinvelt v Rinvelt*, 190 Mich App 372, 379; 475 NW2d 478 (1991) (stating that "the outdated policy concerns that once led courts to refuse to enforce antenuptial agreements are no longer compelling."). Likewise, it has been a long standing policy of this State that "settlements in pending divorce cases, or in contemplation of such proceedings where a separation has actually occurred, are ordinarily recognized as valid in the absence of a specific reason for a contrary holding." *Kull v Losch*, 328 Mich 519, 528; 44 NW2d 169 (1950). Indeed, settlement agreements entered into by the parties are binding contracts once entered into the record. MCR 2.507(H); *Farm Bureau v Buckallew*, 262 Mich App 169, 178; 685 NW2d 675 (2004) (stating that compliance with the court rule permits a party to enforce the settlement as a contract), vacated on other grounds 471 Mich 940; 690 NW2d 93 (2004). Furthermore, "[a]bsent fraud, duress, or mutual mistake, courts must uphold divorce property settlements reached through negotiation and agreement of the parties." *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 560 (1999). Consequently, the parties' settlement agreement entered into during the first divorce action was an enforceable contract absent fraud, duress, or mutual mistake, and the trial court could have enforced it even without the signature of the parties to a consent judgment. *Mikonczyk v Detroit Newspapers*, 238 Mich App 347, 349; 605 NW2d 360 (1999) (holding that the trial court did not err when it enforced a settlement agreement placed on the record, where one of the parties later refused to sign the written agreement). Unfortunately, rather than entering a judgment of divorce pursuant to the settlement agreement, the trial court dismissed the divorce action on other grounds. Therefore, as a preliminary matter, we must determine what affect, if any, the dismissal of the first divorce action had on the parties' settlement agreement.

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<sup>3</sup> The settlement agreement terms were substantially more favorable to defendant than the property division actually entered by the trial court. Under the settlement agreement defendant would have gotten 100% of the home and other lands owned by the parties, as opposed to the 50% actually granted by the trial court. In addition, defendant would have received considerably more spousal support under the settlement agreement.

Plaintiff contends that the settlement agreement in the first divorce action could only become enforceable upon the entry of a judgment of divorce in that case. Thus, when the trial court dismissed that case, the settlement agreement became a nullity. We disagree.

Plaintiff cites *Tiedman v Tiedman*, 400 Mich 571; 255 NW2d 632 (1977), for the proposition that a divorce settlement agreement does not become enforceable until after the trial court enters judgment. Plaintiff's reliance on *Tiedman* is misplaced. In *Tiedman*, the parties to a divorce had entered into a settlement agreement, of which the trial court expressed approval, but before the trial court entered judgment, plaintiff's husband died. *Id.* at 573. Thereafter, the plaintiff in *Tiedman* moved to dismiss the divorce action because she was now a widow. *Id.* The trial court denied the motion and entered a judgment of divorce nunc pro tunc and this Court affirmed. *Id.* at 573-574. Our Supreme Court reversed because it felt that the trial court was without the authority to enter a judgment of divorce because there "must be living parties, or there can be no relationship to be divorced." *Id.* at 576 (citation omitted). Although the Court did state that the trial court was without the power to enter a judgment of divorce or to order a property settlement, *id.* at 577, it did not directly address the status of the settlement agreement or whether it was enforceable despite the death of one of the parties to the agreement. However, this Court examined that very issue in *Kresnak v Kresnak*, 190 Mich App 643; 476 NW2d 650 (1991). The *Kresnak* court adopted the rule that settlement agreements survive the death of one of the parties unless the agreement itself or the surrounding circumstances show that it was not intended to survive. *Id.* at 649-650. Here, the only intervening event that might have had an impact on the settlement agreement was the dismissal of the previous divorce action, and thus, we need only decide whether the settlement agreement survived the earlier dismissal without prejudice.

While it is true that a dismissal of an action without prejudice terminates the proceedings, see *Northrup v Jay*, 262 Mich 463, 464; 247 NW 717 (1933), the fact that the proceedings themselves are terminated does not necessarily terminate a settlement contract entered into by the parties to the dismissed action. Indeed, it may even be the case that the parties to a negotiated settlement agreement required the dismissal of the action as a term of the contract. See e.g., *Farm Bureau*, *supra* at 173. Hence it cannot be said that every dismissal will automatically void a settlement agreement entered by the parties to the dismissed action. Instead, it is the expressed intent of the parties to the contract that controls. *Mikonczyk*, *supra* at 349-350; *Kresnak*, *supra* at 650 (stating that continued enforceability of a settlement agreement after the death of a party is a question of the parties' intent). Trial judges are not free to pick and choose the contracts they will enforce, but rather the "general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." *Wilkie*, *supra* at 62 (citation omitted). Therefore, if it were the intent of these parties that the settlement agreement would control the disposition of the marital assets and obligations upon a judgment of divorce, then the trial court, under these facts,<sup>4</sup> should have given force to that intent.

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<sup>4</sup> The trial court also indicated that defendant waited too long to request enforcement of the settlement agreement. However, given the six-year statute of limitations applicable to contracts, (continued...)

Although the parties' marriage did not end with the first divorce action, the record for the July 12, 2002 hearing makes it clear that both parties intended the settlement agreement to govern the disposition of their marital property and obligations upon the dissolution of their marriage. For this reason, once the second divorce action began, the trial court should have afforded the same level of respect for the parties' settlement agreement that the law affords antenuptial agreements, *Rinvelt, supra*, or agreements entered into after separation in anticipation of divorce, *Kull, supra*.<sup>5</sup> Consequently, the trial court erred when it refused to enforce an otherwise valid and enforceable agreement governing the division of marital assets and settling the parties' marital obligations. We reverse and remand to the trial court for entry of judgment pursuant to the terms of the July 12, 2002 settlement agreement. Because we reverse and remand, we need not address defendant's second claim of error.

Reversed and remanded. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Michael R. Smolenski

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(...continued)

MCL 600.5807(8), we believe that defendant's delay of several months before requesting the adoption of the settlement agreement does not alter this result.

<sup>5</sup> We recognize that both *Rinvelt* and *Kull* make exceptions for the enforcement of inequitable contracts in the divorce context, but we see no evidence in the record that might suggest that the settlement agreement was inequitable. See *Rinvelt v Rinvelt*, 190 Mich App 372, 380; 475 NW2d 478 (1991) (stating that courts may choose not to enforce antenuptial agreements if there are changed circumstances that make its enforcement unfair and unreasonable); *Kull v Losch*, 328 Mich 519, 528; 44 NW2d 169 (1950) (stating that "recognition of an agreement that is inequitable should be denied."). Furthermore, there is no suggestion in the record that there were changed circumstances during the eight days between the dismissal of the first divorce action and the start of the second, such that it would now be unreasonable to enforce the agreement.